

AMENDMENT AND RESPONSE

Serial Number: 09/659,502

Filing Date: September 11, 2000

Title: AROMATHERAPEUTIC ENVIRONMENTAL SYSTEM

Page 6

Dkt: 497.001US1

24. The kit of claim 22 wherein the at least one identical essential oil comprises citrus mint.

Please cancel claim 25, without prejudice.

26. A method for providing aromatherapy to persons within an ambient environment comprising directly applying a liquid composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, foreign matter removal, moisturizing, dish soaps, and ironing liquids, the liquid composition comprising only two liquid solvents and an aromatherapeutic concentration of an aromatherapeutic essential oil, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment.

PLEASE ADD THE FOLLOWING NEW CLAIMS:

27. A method for providing aromatherapy to persons within a room comprising directly applying a composition consisting of a liquid composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, foreign matter removal, moisturizing, and ironing, the liquid composition having an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the room to effect aromatherapy on persons within the room, the solvents in said liquid composition consisting essentially of materials selected from the group consisting of water and alcohols.

28. The method of claim 27 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.

REMARKS CONCERNING THE AMENDMENTS

The above amendments have been made in an effort to more clearly define the invention and to respond to issues in the rejections.

Antecedent basis for the amendments may be found generally in the specification and, for example, original claim 1 and page 20, lines 4-22. New claims 27 and 28 find similar antecedent basis and also original claim 20.

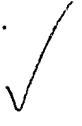
RESPONSE TO THE REJECTIONS

Rejections Under 35 U.S.C. 112, First Paragraph

Applicants have cancelled the term Petuli oil. That rejection is moot.

Rejections Under 35 U.S.C. 112, Second Paragraph

Each of the objected to terms will be addressed in the discussion below.

a) Claims 1 and 22 "ambient environment." 

That term is specifically defined in the specification on page 21, lines 13-18. That definition is clear, concise and sufficiently precise to enable one of ordinary skill in the art to understand the limits of the claims. As that term has been clearly defined in the specification and that definition is clear to one skilled in the art, the rejection is in error and must be withdrawn. Application would be willing to insert a definition based on the disclosure into the claims, although that would render the claim more wordy. Applicants do not understand how the rejection asserts that there is no definition at the cited location. The precise quote at that location is:

"By ambient environment, it is meant an environment where there is some significant confinement of the air in that region, such as a residence, business office, enclosed vehicle, kitchen, rest room, lavatory, theatre, museum, or the like. It would not apply to an outdoor stadium, park area, or the like. The ambient environment should not have all air in the volume replaced in less than fifteen minutes for the release of the aromatherapy benefits of the essential oils." Page 21, lines 13-18.

That language is clearly a definition of the term that is also consistent with the common and readily understood meaning of the term. One of ordinary skill in any scientific art would understand this term, even without the precise definition provided in the specification.

In addition to the fact that "ambient environment" is specifically and clearly defined in the specification, that term is well known in scientific and academic literature, having essentially the same meaning as defined in the specification. Enclosed are "Architectural and Urban

AMBIENT ENVIRONMENT" from the First International Workshop on Architectural and Urban Ambient Environment (January 25, 2002, <http://www.cerma.archi.fr/workshop02/>; the US Department of Energy Office of Fuel Development Project Summaries, having a section titled "Effects of Ambient Environment on the Storage of Switchgrass in Virginia, and a copy of that section; a report from a combined project of Princeton University and NASA on the "General Background for Spherically Symmetric Isolated Droplet Combustion" in which the term "ambient environment" is used casually in the first paragraph of the text, line 12; an article from the WORLD BANK GROUP titled "Types of Environmental Standards" in which the term "ambient environment" is used in the last line of the first paragraph under "Emissions Standards"; and a publication from the US Environmental Protection Agency, titled "Chemical and Pesticide Safety and Use toxicity of the ambient environment.

It should be abundantly clear that not only is the term well defined in the specification, but also, the term is in common use in the technical arts.

- b) Claims 1, 21 and 22, the phrase "for effecting aromatherapy to an ambient environment."

The specification clearly defines the nature and well-established acceptance of aromatherapy. A visit to any cosmetic department, spa, or the internet will show that the concept and performance of aromatherapy is well known. The name is almost self-evident, even if it weren't thoroughly defined in the specification. The meaning is providing therapy with an aroma. As the term "ambient environment" has been shown to thoroughly understood in a wide range of scientific disciplines and is understood to have the same meaning as defined in the specification, the nature of the objection (which is not provided except for the legal conclusion that it is not understood) must be overwhelmed by the consistent and thorough understanding of all terms within the art. The rejection is in error and must be withdrawn.

If this rejection is to be repeated, the PTO is requested to provide scientific reasons why the process, with such broad and general understanding in the art, is not understood.

All issues under 35 U.S.C. 112, first paragraph and second paragraph have been overcome by the above amendment, arguments or comments.

Rejections Under 35 U.S.C. 102(b) and 35 U.S.C. 102(e)

Claim 1 recites:

A method for providing aromatherapy to persons or animals within an ambient environment comprising applying a liquid composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, foreign matter removal, moisturizing, dish soaps, and ironing liquids, the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, solvents in said liquid composition consisting essentially of liquids selected from the group consisting of water and alcohols.

Claims 1-21 Have Been Rejected As Anticipated by Ferguson et al. (U.S. Pat. No. 6,045,813)
The patentability of Claims 1-4 and 10 shall stand or fall with the patentability of claim 1.

Ferguson et al. shows an encapsulated medium that is applied with active cleaning ingredients or other functional ingredients in a friable microcapsule. A liquid with the microcapsules dispersed therein are applied to a surface, and the capsules must be broken to cause contact of the active ingredients with the surface. There is no direct application of the liquid composition to the surface. Direct mean exactly that – application of the material directly, without intermediate steps (such as rupturing of shells and using shells as an abrasive) to a surface. That recitation specifically excludes the practice of Ferguson et al. Applicants would have likewise been willing to accept language consistent with “non-encapsulated” (for which conception is shown in the specification and the examples, where no capsules are used), but would have used that term only upon pre-agreement by the Examiner that there is no issue of lack of antecedent basis under 35 USC 112, first or second paragraphs in the use of that language. The previous amendment of “directly” applying the liquid is, however, sufficient to

exclude the compositions of Ferguson et al. This reference is not anticipatory of the subject matter of the claims.

The recitation of directly applying is a substantive limitation in the claim and cannot be ignored. The process of Ferguson clearly requires indirect application of active materials, and the composition of those active materials is defined by the needs of an encapsulation system. The encapsulation system of Ferguson is specifically required to separate the active ingredients from the carrier liquid.

Additionally, the incidental disclosure in Ferguson of materials that happen to be aromatherapeutic ingredients (e.g., the 0.1% fill composition of Chamomile extract in Table 7) shows the use of this component below the levels recited in the claims. Although the claims require 0.1% of the liquid composition directly applied to the surface, Ferguson shows such secondary ingredients (as part of the fill in the capsules) as 0.1% of the fill, which is then dispersed in a carrier. Therefore, even if the fill of Ferguson contained concentrations as recited in the claims, those concentrations are highly diluted upon indirect application requiring breakage of the capsules. (See column 9, line 14 through column 10, line 29. The bead comprises 0.5% of the total composition and the chamomile extract is 0.1% of that capsule, indicating a usage level of 0.005%, well below the minimum of 0.1% recited in the claims.

The range of "botanicals described by Ferguson is stated on column 4, lines 1-10 as 0.1-1% as the capsule fill composition (not the total composition of the composition). With the beads as a maximum amount of 2% of the composition (column 4, lines 11-15), the botanicals would therefore constitute a maximum of 2.0% x 1% or 0.02%, well below the minimum recitation of 0.1% recited in the claims. Therefore, even if the disclosure of Ferguson is erroneously interpreted as "direct application," the concentration of applied materials would be outside the scope recited in the claims.

Additionally, the claims now emphasize that a composition consisting of a liquid composition is applied to surfaces. Therefore the claims clearly exclude the solid shells required by Ferguson. The claims cannot be anticipated.

Rejections Under 35 U.S.C. 103(a)

Claims 1-26 have been rejected under 35 USC 103(a) as unpatentable over Ferguson et al. in view of Bonett in further view of Orson and Bajgrowicz. This rejection is respectfully traversed. The rejection fails to show the actual limitations of the claims to be obvious, but rather attacks the individual contents of the compositions and the general field of the invention. The references do not even teach what they must teach to show the limitations of the invention.

First, neither the Ferguson reference nor the Bonett, Orson or Bajgrowicz references show a single applied liquid composition for aromatherapy with the recited high levels of the essential oils. Furthermore, none of the secondary references show why the critical shells of Ferguson that are essential for separation of interactive components, can be removed from the Ferguson materials without destroying this required function in the materials of the composition. In the absence of a showing by the secondary references that would overcome these fundamental and fatal flaws in the teachings of Ferguson, all rejections must fail.

For example, Bonett teaches a single composition that may be separated into two components, and then the components mixed to form a single active composition. This is not a kit with distinct and "separate" active solutions that are complete in themselves. The specific language of the claims is "...at least three separate liquid household products..." Even a single ultimate composition split into two distinct subcomponents that must be later blended cannot approach a teaching of that aspect of the invention.

The teaching of mint oil and citrus oil as a fragrance by Orson is admitted to be art that such fragrances exist (as is already done in the specification), but the showing is still of a single container, with a single composition, which might have numerous uses. That does not meet the limitations of the kit claims.

Bajgrowicz also teaches no more than that different products may be made from essential oils. There is no disclosure that distinct composition having distinct household functions may be separately packaged within a kit so that, when used in conjunction, a single aromatherapy effect may be produced.

It must be noted that Ferguson et al. is specific to and exclusive to microcapsule delivery systems. The compositions are also tailored for indirect delivery through the use of microcapsules. It would not be obvious to eliminate an essential part of the invention of

AMENDMENT AND RESPONSE

Serial Number: 09/659,502

Filing Date: September 11, 2000

Title: AROMATHERAPEUTIC ENVIRONMENTAL SYSTEM

Page 12
Dkt: 497.001US1

Ferguson and modify the composition to merely more closely approximate the disclosure and claims of the present application. There is nothing in the teachings of the secondary references that would motivate one of ordinary skill in the art to modify the delivery system of Ferguson and use the claimed compositions of Applicants.

CONCLUSION

For the above reasons, the rejections of record are in error and should be withdrawn. Applicants would appreciate a telephone call from the examiner if any personal conference would be useful in addressing any remaining issues in this Application. The Examiner is invited to telephone Applicant=s attorney at (952)832.9090 to facilitate prosecution of this application.

Respectfully submitted,

Monica Nassif et al.

By their Representatives,

MARK A. LITMAN & ASSOCIATES P.A.
YORK BUSINESS CENTER, SUITE 205
3209 West 76th Street
Edina, MN 55435
(952)832.9090

Date 17 March 2003

By



Mark A. Litman
Reg. No. 26,390

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to BOX AMENDMENT, Assistant Commissioner of Patents, Washington, D.C. 20231 on 17 March 2003.

Name



Signature

